

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

-----  
RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING NOVEMBER 2020. (This publication can be viewed in its entirety on the state court website at: [www.courts.state.co.us](http://www.courts.state.co.us)).  
-----

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during November 2020, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, are as follows:

-----  
**CASE NO. 2020CW10; MR. ALFRED G WEBSTER and MRS. LEANNA MAHUKA, PO Box 609, Parker, CO 80134; (303)324-0293**

Application for Absolute Water Rights (Surface)

**PARK COUNTY**

**2. Name of Structure:** AMR Lot 10 Spring 1. **3. Legal Description of Structure:** AMR Lot 10 Spring 1, Northing: 4285987, Easting: 450029. See general location map attached to the application. (General location map mentioned herein is incorporated by reference and may be inspected at the office of the clerk of this Court.) Source of UTM: Hand-held Garmin GPS. Accuracy of location displayed on GPS device: 10 feet. **4. Source:** AMR Lot 10 Spring 1, an unknown named tributary 10 31 Mile Creek, tributary to Currant Creek, tributary to Arkansas River. **5. Appropriation Date:** A. Prior to August 2014 for livestock and wildlife uses. **B. How appropriation was initiated:** Unknown. Flows were placed in stock tanks and used for livestock and wildlife purposes prior to our purchase of the property in 2014. **C. Date water applied to beneficial use:** For livestock and wildlife uses prior to purchase of property in August 2014. **6. Amount:** 1 gallon per minute estimate for absolute right. To the applicant's knowledge, flows from this spring has been historically administered as being futile to downstream water rights. **7. USE:** AMR Lot 10 Spring 1 has been used for livestock and wildlife uses on AMR Ranch property. **8. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant

-----  
**CASE NO. 2020CW11; Previous Case Nos. 2000CW122, 2007CW97, 2014CW14 – GWENDOLYN B. CHAMPION, 2608 North Logan Avenue, Colorado Springs, CO 80907; (719) 471-3760**

Application to Make Absolute in Whole or in Part

**CHAFFEE COUNTY**

**2. Name of Structure:** Rob Roy Ditch. **3. Describe conditional water right:** **A. Date of Original Decree:** October 17, 2001. **Case No:** 2000CW12. **Court:** Water Division 2. **B. All subsequent decrees awarding findings of diligence:** **Date of Decree:** September 11, 2008. **Case No:** 2007CW97(2000CW122). **Court:** Water Division 2. **Date of Decree:** December 15, 2014. **Case No:** 2014CW14. **Court:** Water Division 2. **C. Legal**

**Description:** The headgate is located at a point on the East bank of Coal Camp Canyon Creek Which is tributary to Chalk Creek from which is derives its supply of water, whence the W¼ corner, Section 26, Township 15S, Range 80 West of the 6<sup>th</sup> Principal Meridian, bears S 9°29'E 718 feet. The depth of said ditch at high-water line is .30 feet. The width of said ditch at high water-line is 2.0 feet. The bottom width of said ditch is 1.5 feet. The grade of said ditch is 140 feet per 1,000 feet. The length of said ditch is 1301 feet. The carrying capacity of said ditch is 3.0 feet per second of time. Source of UTM: Hand-held Garmin GPS. Accuracy of location displayed on GPS device: 10 feet. **4. Source:** Coal Camp Canyon Creek which originates in the East ½ of Section 27, Township 15S, Range 80 West of the 6<sup>th</sup> Principal Meridian and terminates in the North ½ of Section 26, Township 15S, Range 80 West where said ditch empties into the Chalk Creek which is tributary to the Arkansas River. See **Exhibit B** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **E. Appropriation Date:** July 16, 1957. **Amount:** 1.0 c.f.s. **F. Use:** Domestic purposes, single family dwelling, stock watering and irrigation of approximately 2500 sq. ft. of lawns and gardens within the Rob Roy Millsite, Chaffee County, Colorado. **4. Detailed outline of what has been done toward completion:** Domestic purposes, single family dwelling, stock watering and irrigation of approximately 2500 sq. ft. of lawns and gardens within the Rob Roy Millsite, Chaffee County, Colorado. **5. Claim to make absolute in whole or in part:** A. Date water applied to beneficial use: August 8, 1964 to present. Amount: 1.0 c.f.s C. Description of place of use where water is applied to beneficial use: Proposed to be irrigated is approximately 2500 sq. ft. located within the Rob Roy Millsite, Chaffee County, Colorado. **6. UTM Coordinates:** Easting: 396293, Northing: 4284548 **7. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant

-----  
**CASE NO. 2020CW3067; STATE ENGINEER AND WATER DIV 2 ENGINEER vs. MT. PRINCETON HOT SPRINGS RESORT, an entity of Princeton Holdings, LLC, a Colorado limited liability company and TOM WARREN, an individual** – Verified Complaint for Injunctive Relief, Civil Penalties, and Costs. This case is being listed in the resume to account for the case number in consecutive order.  
-----

**CASE NO. 2020CW3068; PAUL A. KINCH and AMY L KINCH, 10805 Milam Rd. Colorado Springs, CO 80908** (Please address all pleadings and inquiries regarding this matter to Applicants' attorneys: Ryan W. Farr, #39394 Emilie B. Polley, #51296, MONSON, CUMMINS & SHOHET, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921; (719) 471-1212)  
Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation

**EL PASO COUNTY**

**II. Summary of Application.** Applicants seeks to utilize and construct up to four (4) non-exempt wells to the not-nontributary Dawson aquifer to provide water service to an equivalent number of single family lots, based on an anticipated subdivision of Applicants'

30 acre parcel. Applicants therefore seek to quantify the Denver Basin groundwater underlying the Applicants' Property, and approval of a plan for augmentation for the use thereof. **III. Application for Underground Water Rights.** A. Legal Description of Wells. 1. Property Description. All wells will be located on Applicants' approximately 30 acre property ("Applicants' Property") anticipated to be subdivided into four lots, with current schedule number 6224000011. See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Located in the SW¼ of Section 24, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M., and more particularly described as 10805 Milam Rd., Colorado Springs, CO 80908, El Paso County, Colorado. 2. Existing Well. There is an existing domestic well with Division of Water Resources Permit No. 276175-A ("Kinch Well No. 1), permit attached as **Exhibit B**. It is drilled to a total depth of 400 feet to the Dawson aquifer, and located 1413 feet from the South Section Line, and 1632 feet from the West Section Line. Upon approval of this plan for augmentation, this well will be re-permitted. 3. Proposed Wells. Applicant proposes that up to three wells (one well per lot) will be located on the Applicant's Property at specific locations not yet determined ("Kinch Wells Nos. 2 through 4"), to be constructed to the Dawson aquifer, for a total of four wells on Applicants' Property. B. Water Source. 1. Not-Nontributary. The ground water to be withdrawn from the Dawson, Denver and Arapahoe aquifers underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. 2. Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicant's Property is nontributary. C. Estimated Rates of Withdrawal and Ground Water Available. 1. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicants request the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicants request a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicants' Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code §8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to C.R.S. §37-90-137(4). Applicants estimate that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicants' Property:

The NE¼ SW¼ of Section 24, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M.

<b>AQUIFER</b>	<b>NET SAND (Feet)</b>	<b>Total Appropriation (Acre Feet)</b>	<b>Annual Avg. Withdrawal 100 Years (Acre Feet)</b>	<b>Annual Avg. Withdrawal 300 Years (Acre Feet)</b>
Dawson (NNT)	78.40	178.91	1.79	0.60
Denver (NNT)	346.80	672.63	6.73	2.24
Arapahoe	276.20	497.71	4.98	1.66

(NNT)				
Laramie Fox Hills (NT)	189.70	324.67	3.25	1.08

The SE¼ SW¼ of Section 24, Township 12 South, Range 66 West of the 6<sup>th</sup> P.M.

AQUIFER	NET SAND (Feet)	Total Appropriation (Acre Feet)	Annual Avg. Withdrawal 100 Years (Acre Feet)	Annual Avg. Withdrawal 300 Years (Acre Feet)
Dawson (NNT)	69.30	245.46	2.45	0.82
Denver (NNT)	331.10	996.84	9.97	3.32
Arapahoe (NNT)	277.30	834.87	8.35	2.78
Laramie Fox Hills (NT)	189.20	502.61	5.03	1.68

Decreed amounts may vary from the above to conform with the State's Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicants further request that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. D. Requested Uses. The Applicants request the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, irrigation, stock water, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicants also request that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicants' Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicants may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicants shall only be entitled to construct wells or use water from the not-nontributary Dawson, Denver, and Arapahoe aquifers pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c.5). E. Well Fields. Applicants request that they be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicants' Property through any combination of wells. Applicants request that these wells be treated as a well field. F. Averaging of Withdrawals. Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicants' Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicants are entitled to withdraw from the aquifers underlying the Applicants' Property. G. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located as well as the underlying groundwater is owned by the Applicants. **IV. APPLICATION FOR PLAN FOR AUGMENTATION.** A. Structures to be Augmented. The structures to be augmented are the Kinch Wells Nos. 1 through 4, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer of the Denver Basin underlying the Applicants' Property as requested and described herein. B. Water Rights to be Used for

Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from the Kinch Wells Nos. 1 through 4, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. C. Statement of Plan for Augmentation. Applicants wish to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by four wells proposed herein for four residential lots. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: 1. Uses. i. Household Use Only: 0.25 acre feet annually within single family dwellings on up to 4 lots, and 0.20 acre feet annually within a guest house on one lot, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for each lot will therefore be 0.025 acre feet per lot, and 0.02 acre-feet for an additional guest house, with return flows of 0.225 acre feet per lot, and 0.18 for a guest house, or a total of 1.08 acre-feet per year. ii. Landscape Irrigation: 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre feet. iii. Horses (or equivalent livestock): 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component. 2. Kinch Well No. 1 will pump a maximum of 0.51 acre-feet for a residence and guest house, and the Kinch Wells No. 2 through 4 will each pump a maximum of 0.30 acre feet of water per year per residence, for a maximum total of 1.41 acre-feet being withdrawn from the Dawson aquifer per year. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.25 acre feet of water per year per residence and an additional 0.20 acre feet of water per year for a guest house, with the additional 0.21 acre feet per year available for irrigation of lawn and garden and the watering of horses or equivalent livestock on each residential lot. 3. Depletions. Applicants' consultant has determined that maximum stream depletions over the 300 year pumping period for the Dawson aquifer amounts to approximately 27.17% of pumping. Maximum annual depletions for total residential pumping from all wells are therefore 0.38 acre feet in year 300. Should Applicants' pumping be less than the 1.41 total, which represents a maximum total of 0.90 acre feet for three wells/lots, and 0.51 acre-feet for the fourth well/lot, per year, as described herein, resulting depletions and required replacements will be correspondingly reduced. 4. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicants are required to replace actual stream depletions attributable to pumping of the four residential wells. Applicants' consultant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.25 acre feet per residence per year, plus an additional 0.20 acre feet for a guest house per year, total of 1.20 acre feet, 1.08 acre feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be more than adequately augmented. 5. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Kinch Wells Nos. 1 through 4, Applicants will reserve up to

the entirety of the nontributary Laramie Fox Hills aquifer, accounting for actual stream depletions replaced during the plan pumping period, as necessary to replace any injurious post pumping depletions. Applicants also reserve the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicants reserve the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicants will be entitled to apply for and receive a new well permit for the Kinch Wells Nos. 1 through 4 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137. **V. Remarks.** A. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the Arkansas River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter with pending Division 1 application in Water Division 2 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas River as set forth herein, and for a finding that those replacements are sufficient. B. Applicants request a finding that they have complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). C. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. D. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. E. The Applicants request a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. F. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicants shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. G. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. H. Applicants will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(l), and such notice will be sent within 14 days of the filing of this application.

-----  
**CASE NO. 2020CW3069; Previous Case Nos. 97CW160, 14CW3034 – SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT (SOUTHEASTERN); c/o Lee E. Miller, General Counsel; 31717 United Avenue, Pueblo, CO 81001.** (Please address all pleadings and inquiries regarding this matter to

Applicants' attorneys: Stephen H. Leonhardt and April D. Hendricks; Burns, Figa & Will, P.C.; 6400 S. Fiddlers Green Circle, Suite 1000, Greenwood Village, CO 80111; (303) 796-2626)

Amended Application for Finding of Reasonable Diligence and to Make Absolute in Part.  
**CHAFFEE COUNTY.**

**2. Purpose of Application.** Southeastern seeks a finding of reasonable diligence for the remaining conditional portions of the appropriative rights of exchange decreed in Case No. 97CW160 (the "South Arkansas River Project Water Exchange" or "South Arkansas River Exchange"). Southeastern also seeks to make an additional portion of its South Arkansas River Exchange absolute. The purpose of this exchange is to deliver Fryingpan-Arkansas Project Water ("Project Water") allocated by Southeastern to eligible entities whose storage facilities and/or points of diversion are located in the drainage basin of the South Arkansas River.

**3. Description of Conditional Appropriative Rights of Exchange.**

**A. Previous Decrees:**

- i. Original Decree:** Case No. 97CW160, entered July 10, 2008, by District Court, Water Division 2, Colorado.
- ii. Subsequent Diligence Decree:** Case No. 14CW3034, entered November 19, 2014, by District Court, Water Division 2, Colorado.

**B. Exchange Reach:** The following reach of the South Arkansas River and its tributaries, including the North Fork of the South Arkansas River, Poncha Creek, Gray's Creek, and the Middle Fork and Lake Fork of the South Arkansas River. The upstream termini are on the North Fork of the South Arkansas River, at North Fork Reservoir; on Gray's Creek, at the O'Haver Filler Ditch headgate; and on the Lake Fork of the South Arkansas River, at Boss Lake. The downstream terminus is the confluence of the South Arkansas River with the Arkansas River.

- i. Lower Terminus:** The confluence of the Arkansas River and the South Arkansas River, located in the SW1/4 SE1/4 Section 4, Township 49 North, Range 9 East of the N.M.P.M., at a point approximately 300 feet North of the South Section line and 2,300 feet west of the East Section line.
- ii. Upper Termini (for conditional rights):**
  - a. O'Haver Reservoir,** located in the center of Section 12, Township 48 North, Range 7 East, N.M.P.M. O'Haver Reservoir is an off-channel reservoir fed by Gray's Creek, tributary to Poncha Creek, through the O'Haver Filler Ditch, headgate in the NW1/4 SW1/4 of said Section 12, approximately 5,000 feet from the East section line and 1,400 feet from the South section line.
  - b. Boss Lake,** located in NE1/4 of Section 29, Township 50 North, Range 6 East, N.M.P.M.
  - c. Any points along the South Arkansas River upstream of the Poncha Springs wells and any points along the North Fork of the South Arkansas River downstream of North Fork Reservoir.**
- iii. A map of the exchange reach is attached to the Application as Exhibit A.**

**C. Source of Exchange Water:**

- i. Fryingpan-Arkansas Project Water – West Slope Decrees:** The Fryingpan-Arkansas Project ("Project") diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County. The principal water rights were adjudicated by the decrees in Civil Action No. 4613 (District Court, Garfield County) dated June 20, 1958, and August 3, 1959; and were modified by the decree in Case No. W-829-76 (District Court, Water Division No. 5) dated November 27, 1979; and were supplemented by the decree in Case No. 83CW352 (District Court, Water Division No. 5) dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, and applied to beneficial use within

Southeastern's District boundaries. Because the water is imported from another river basin, it is fully consumable within Southeastern's District boundaries in Water Division 2.

**ii. Fryingpan-Arkansas Project Water – East Slope Decrees:** The Fryingpan-Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141 (District Court, Chaffee County) dated July 9, 1969; and Civil Action No. B-42135 (District Court, Pueblo County) dated June 25, 1962; and were modified and supplemented by the decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed as fully consumable and for reuse and exchange, for beneficial use within Southeastern's District boundaries. Under these decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native water or imported water, directly or by exchange with each other or with Pueblo Reservoir.

**iii. Project Water Allocations and Limitations:** The Upper Arkansas Water Conservancy District ("UAWCD"), the Town of Poncha Springs, the City of Salida ("Salida") and others are eligible to receive annual allocations of Project Water, which they may purchase and use after it is allocated to them by Southeastern. Southeastern allocates Project Water annually based on its principles, policies, rules and regulations, as they may be amended. Any and all use of Project Water in these exchanges will be pursuant to and subject to the above-referenced Decrees for the Fryingpan-Arkansas Project, and to all lawful rules, regulations, policies, and contract obligations of Southeastern. This Application does not seek to give UAWCD, Salida, and Poncha Springs any rights to use Fryingpan-Arkansas Project structures, or any rights of ownership or rights to purchase or receive allocation of Project Water or return flows therefrom, but does not alter any existing rights (including allocation rights) they may otherwise have. UAWCD, Salida, Poncha Springs, and others may exchange and use Project Water only if, when, and to the extent they have purchased such water after it is allocated to them by Southeastern. This Application does not in any way seek to modify Southeastern's decrees for the Fryingpan-Arkansas Project Water rights. The description of or reference to structures and water rights herein, other than the proposed exchanges described in this Application, does not in any way seek to amend or limit the decrees for those structures and water rights, and omissions in such descriptions and references shall in no way prejudice the owners of those structures and water rights.

**D. Appropriation Date:** February 10, 1939. **E. Sources:** South Arkansas River and its tributaries, specifically the North Fork of the South Arkansas River, Poncha Creek, Gray's Creek, and the Middle Fork and Lake Fork of the South Arkansas River. The source of substitute supply is Project Water, as described in Paragraph 3.C, above.

**F. Amount:** Maximum total exchange rate of 60 c.f.s.; maximum total volume of 495 acre-feet per year. This maximum rate and amount include any exchanges of Project Water on the subject streams under the priorities decreed in Case No. 97CW160, including certain exchanges made under previous decrees specified in Paragraph 8.b of the Decree in Case No. 97CW160.

**G. Uses:** **i. Salida:** Salida uses allocated Project Water within its municipal boundaries as a supplemental supply for municipal uses, including commercial, industrial, domestic uses and irrigation use incidental thereto. **ii. Poncha Springs:** Poncha Springs uses allocated Project Water within its municipal boundaries as a supplemental supply for municipal uses, including commercial, industrial, domestic uses and irrigation



use incidental thereto. **iii. UAWCD:** UAWCD uses allocated Project Water as a supplemental supply for augmentation, municipal, industrial, and irrigation uses. **iv.** Southeastern may also provide allocated Project Water to other parties for municipal, industrial, irrigation and augmentation uses within Southeastern's District boundaries. **v.** Allocated Project Water also may be used to replace evaporation losses on allocated Project Water stored by exchange in North Fork Reservoir, O'Haver Reservoir, and Boss Lake. **4. Detailed outline of work done toward operation of exchanges, completion of project and application of water to beneficial use:** **A.** During the diligence period, lasting from November 2014 to November 2020, Southeastern's staff has communicated with the United States Bureau of Reclamation, the Division Engineer for Division 2, and UAWCD to develop accounting for the exchanges decreed in Case No. 97CW160 and to monitor their operation. **B.** Salida, Poncha Springs and UAWCD rely in part on Project Water for the operation of their integrated water systems and augmentation plans, and all three entities received allocations of Project Water in most years during the diligence period. The South Arkansas River Exchange is an important way to deliver Project Water to Southeastern's constituents to allow them to operate and further develop their systems. **C.** UAWCD has obtained and renewed authorizations from the United States Forest Service to maintain and operate North Fork Reservoir, O'Haver Reservoir, and Boss Lake. In its operation of these reservoirs, UAWCD has also cooperated with Southeastern to operate the portions of the conditional exchanges Southeastern is claiming as absolute. UAWCD's operation of the South Arkansas River Exchange, the structures involved in the exchange, and its integrated water system as a whole shows diligence made toward developing Southeastern's conditional rights decreed in Case No. 97CW160. **D.** As this Court has previously found, the construction, operation and maintenance of parts of the Fryingpan-Arkansas Project demonstrate reasonable diligence for other parts of the Project. See, e.g., Decree in Case No. 14CW3034 at 5, ¶ 10 (Nov. 19, 2014). The collection, transportation, storage, and power systems of the Fryingpan-Arkansas Project comprise one overall, integrated water supply project. The Fryingpan-Arkansas Project is the source of water for the South Arkansas River Exchange. Reasonable diligence on the Fryingpan-Arkansas Project is reasonable diligence on the South Arkansas River Exchange. *Id.* **E.** Work in connection with the Fryingpan-Arkansas Project and all its decreed diversions has been prosecuted with reasonable diligence. The existing East Slope structures of the Fryingpan-Arkansas Project have been used to convey and store Project Water, including that diverted from the West Slope, and to deliver such water for decreed beneficial uses. Southeastern has contractual agreements for planning, construction, operation, maintenance and repayment of the Fryingpan-Arkansas Project with the United States Bureau of Reclamation. Consequently, the acts of the Bureau of Reclamation evidence diligence with respect to Southeastern's water rights. **F.** Fryingpan-Arkansas Project activities include operation, maintenance and improvement of the collection system. Operation is subject to the terms of Water Division 5 and Division 2 Decrees, the Operating Principles, and the Congressional authorizing legislation. Current diversions and recordkeeping are integral to future development of the system's conditional rights. **G.** Throughout the diligence period, the existing facilities of the Fryingpan-Arkansas Project, including Turquoise Lake and Twin Lakes Dam, were in operation and maintenance status. From November 2014 through November 2020, Southeastern expended more than \$20 million on East Slope and West Slope Project

operation and maintenance costs. **H.** Southeastern has expended during November 2014 through November 2020 more than \$350,000 for engineering and more than \$1,500,000 for legal fees, primarily to protect Southeastern's West and East Slope water decrees and for further Project development. Southeastern has appeared as a party in various water rights proceedings involving water rights along the Arkansas River and its tributaries in order to protect Southeastern's various decreed rights in the Fryingpan-Arkansas Project. Southeastern also has expended substantial executive time and legal and engineering expense toward protecting and administering the Winter Water Storage Program in Pueblo Reservoir pursuant to the Decree in 84CW179, which program contributes to repayment of the Fryingpan-Arkansas Project costs. Southeastern has taken part in various legislative, administrative and judicial proceedings to protect Southeastern's rights in the Fryingpan-Arkansas Project, including its absolute and conditional East Slope water rights. **I.** Southeastern has been diligent in the development of the remaining conditional water rights for the Project, and has been awarded findings of reasonable diligence for both its West Slope and East Slope conditional rights, in Case Nos. 18CW3063 (Water Division No. 5) and 16CW3079 (Water Division No. 2), respectively. Moreover, in Case No. 16CW3076, Water Division 2, Southeastern adjudicated changes in points of diversion and changes of use for several of the Project's conditional water rights decreed in Civil Action No. 5141. These changes, decreed on November 11, 2018, will better maintain the feasibility of future development and use of those conditional rights as the Fryingpan-Arkansas Project is developed and operated. **J.** Southeastern also completed the adjudication of exchange rights in Case No. 06CW08, Water Division No. 2, in which a final decree was entered on February 14, 2017. This exchange permits the diversion of non-Project water by exchange upstream on the Arkansas River at Pueblo Reservoir (including the proposed Pueblo Reservoir Enlargement), and to deliver to the downstream calling water right an equivalent amount of substitute supply water from ditch diversions and storage in facilities below Pueblo Reservoir. Additionally, in Case No. 17CW3046, Water Division No. 2, Southeastern made absolute an additional portion of its appropriative right of exchange decreed in Case No. 99CW160, and received a finding of reasonable diligence for the remaining conditional portion of this water right. That exchange enables Southeastern to deliver Project Water to facilities along Grape Creek for use by entities within Southeastern's boundaries that may be served by releases from the DeWeese-Dye Reservoir. Southeastern's exchanges help to "secure the greatest benefit from the use and reuse of imported project waters within project boundaries in the State of Colorado," as provided in the Operating Principles and contemplated in the decrees for Southeastern's water rights. Southeastern's activities with regard to these exchanges demonstrate reasonable diligence with respect to Southeastern's water rights for the Project. **K.** The work performed and actions taken by Southeastern during the diligence period demonstrate Southeastern's continuing need for and intent to develop the conditional exchange rights that are the subject of this Application. Moreover, these actions further establish that Project Water can and will be diverted by exchange; that the exchanged water can and will be beneficially used; and that Southeastern can and will complete the development of the South Arkansas River Exchange with diligence and within a reasonable time. **5. Claim to Make Conditional Right Absolute in Part:** **A. Date(s) water exchanged and applied to beneficial use:** April 2015 to Present. **B. Amount:** During the diligence period,

from November 2014 through November 2020, Project Water has been exchanged to Boss Lake and O’Haver Reservoir, in the following amounts. **i. Boss Lake**: Maximum daily average exchange rate of 0.46 cfs on October 28, 2015; and maximum annual exchange into storage of 20.25 acre-feet in 2016, as shown in Exhibit B attached to the Application. **ii. O’Haver Reservoir**: Maximum daily average exchange rate of 0.75 cfs on April 15, 2015; and maximum annual exchange into storage of 70.77 acre-feet in 2015, as shown in Exhibit B attached to the Application. **C. Description of Exchange Locations**: Project Water was exchanged from the confluence of the Arkansas River and the South Arkansas River, as described in Paragraph 3.B.i, to O’Haver Reservoir, as described in Paragraph 3.B.ii.a; and to Boss Lake, as described in Paragraph 3.B.ii.b. **D. Use and place of use**: Within the portion of UAWCD’s service area that also lies within Southeastern’s District boundaries, for the purposes described in Paragraph 3.G.iii. **6. Owners of Land and Facilities**: The United States Department of Interior, Bureau of Reclamation, owns Turquoise Reservoir and Twin Lakes Reservoir, and operates these facilities as part of the Congressionally-authorized Fryingpan-Arkansas Project. As part of this operation, Project Water is stored in these reservoirs under the West Slope Decrees and East Slope Decrees described in Paragraph 3.C. Pursuant to the Fryingpan-Arkansas Project Operating Principles and Southeastern’s repayment contract with the United States, Allocated Project Water is released from storage based on Southeastern’s allocations of such water. O’Haver Reservoir and Boss Lake are located on federal lands within the San Isabel National Forest, which is managed by the USDA Forest Service. UAWCD has agreements with the Chaffee County Board of Commissioners that transfer the control, management, operation, and all right and interest of the County in and to O’Haver Reservoir and Boss Lake to UAWCD. WHEREFORE, the Southeastern Colorado Water Conservancy District respectfully requests that this Court enter a decree (1) finding that Southeastern’s South Arkansas River Exchange has been made absolute in the additional amount of 0.46 cfs and 20.25 acre-feet per year for exchanges to Boss Lake and 0.75 cfs and 70.77 acre-feet per year for exchanges to O’Haver Reservoir; (2) finding that Southeastern has exercised reasonable diligence in the development of the remaining conditional rights of exchange that is the subject of this Application; (3) continuing the conditional rights of exchange in full force and effect for another six years, until the date set for a subsequent application for a finding of reasonable diligence; and (4) providing such other and further relief as this Court deems just and proper.

-----  
**CASE NO. 2020CW3070, Water Division 2 and CASE NO. 2020CW3177, Water Division 1 – RAMSES II PROPERTIES, LLC, C/O: Donnie Wisenbaker, 312 S. Weber Street, Suite 260, Colorado Springs, CO 80903**

(Please address all pleadings and inquiries regarding this matter to Applicant’s attorneys: Chris D. Cummins, #35154, Emilie B. Polley, #51296, MONSON, CUMMINS & SHOHET, LLC 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921; (719) 471-1212)

Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation.

**EL PASO COUNTY**

**II. Summary of Application:** Applicant seeks to construct up to three (3) non-exempt wells to the not-nontributary Dawson aquifer to provide water service to an equivalent number of single family lots, based on an anticipated subdivision of Applicant’s 20 acre

parcel. Applicant therefore seeks to quantify the Denver Basin groundwater underlying the Applicant's Property, and approval of a plan for augmentation for the use thereof. **III. Application for Underground Water Rights:** A. Legal Description of Wells. 1. Property Description. All wells will be located on Applicant's approximately 20 acre property ("Applicant's Property") anticipated to be subdivided into four lots of +/-5 acres each, with current schedule number 5221200027. Applicant's Property is depicted on **Exhibit A** attached to the application a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) Located in the NW¼ NW¼ of Section 21, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., and more particularly described as 7985 Burgess Road, Colorado Springs, CO 80908, El Paso County, Colorado. 2. Existing Well. There is an existing domestic well with Division of Water Resources Permit No. 99861 ("Ramses Well No. 1), permit attached as **Exhibit B**. It is drilled to a total depth of 285 feet to the Dawson aquifer, and located 30 feet from the North Section Line, and 990 feet from the West Section Line. Upon approval of this plan for augmentation, this well will be re-permitted. 3. Proposed Wells. Applicant proposes that up to three wells (one well per lot) will be located on the Applicant's Property at specific locations not yet determined ("Ramses Wells Nos. 2 through 4"), to be constructed to the Dawson aquifer, for a total of four wells. B. Water Source. 1. Not-Nontributary. The ground water to be withdrawn from the Dawson, Denver and Arapahoe aquifers underlying the Applicant's Property is not-nontributary. Pursuant to C.R.S. §37-90-137(9)(c.5), the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. 2. Nontributary. The groundwater that will be withdrawn from the Laramie-Fox Hills aquifer underlying the Applicant's Property is nontributary. C. Estimated Rates of Withdrawal and Ground Water Available. 1. Estimated Rates of Withdrawal. Pumping from the wells will not exceed 100 g.p.m. The actual pumping rates for each well will vary according to aquifer conditions and well production capabilities. The Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. 2. Estimated Average Annual Amounts of Ground Water Available. Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Said amounts may be withdrawn over the 300-year life of the aquifers as required by El Paso County, Colorado Land Development Code §8.4.7(C)(1) which is more stringent than the State of Colorado's 100-year life requirement pursuant to C.R.S. §37-90-137(4). Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

<b>AQUIFER</b>	<b>NET SAND (Feet)</b>	<b>Total Appropriation (Acre Feet)</b>	<b>Annual Avg. Withdrawal 100 Years (Acre Feet)</b>	<b>Annual Avg. Withdrawal 300 Years (Acre Feet)</b>
Dawson (NNT)	279	1116.40	11.16	3.72
Denver (NNT)	310	1054.00	10.54	3.51
Arapahoe (NNT)	256	871.08	8.71	2.90

Laramie Fox Hills (NT)	190	570.60	5.71	1.90
------------------------	-----	--------	------	------

Decreed amounts may vary from the above to conform with the State’s Determination of Facts. Pursuant to C.R.S. §37-92-305(11), the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. D. Requested Uses. The Applicant requests the right to use the ground water for beneficial uses upon the Applicant’s Property consisting of domestic, irrigation, stock water, fire protection, and also for storage and augmentation purposes associated with such uses. The Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant’s Property subject, however, to the requirement of C.R.S. §37-90-137(9)(b), that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct wells or use water from the not-nontributary Dawson aquifer pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with C.R.S. §37-90-137(9)(c.5). E. Well Fields. Applicant requests that it be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant’s Property through any combination of wells. Applicant requests that these wells be treated as a well field. F. Averaging of Withdrawals. Applicant requests that it be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant’s Property, so long as the sum of the total withdrawals from all the wells in the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicant is entitled to withdraw from the aquifers underlying the Applicant’s Property. G. Owner of Land Upon Which Wells are to Be Located. The land upon which the wells are and will be located as well as the underlying groundwater is owned by the Applicant. **IV. APPLICATION FOR PLAN FOR AUGMENTATION.** A. Structures to be Augmented. The structures to be augmented are the Ramses Wells Nos. 1 through 4, along with any replacement or additional wells associated therewith, as likewise may be constructed to the Dawson aquifer of the Denver Basin underlying the Applicant’s Property as requested and described herein. B. Water Rights to be Used for Augmentation. The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-nontributary Dawson aquifer from the Ramses Wells Nos. 1 through 4, together with water rights from the nontributary Laramie-Fox Hills aquifer for any injurious post pumping depletions. C. Statement of Plan for Augmentation. Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer by four wells proposed herein for four residential lots. Potential water use criteria and their consumptive use component for replacement of actual depletions for the lots are estimated as follows: 1. Uses. i. Household Use Only: 0.25 acre feet annually within single family dwellings on up to 4 lots, with a maximum of ten percent consumptive use based on a nonevaporative septic leach field disposal systems. The annual consumptive use for each lot will therefore be 0.025 acre feet per well, with return flows of 0.225 acre feet per lot, or 0.9 acre-feet per year. ii. Landscape Irrigation: 0.05 acre feet annually per 1,000 square feet (2.18 acre feet per

acre) per year, with an 85% assumed consumptive use rate. The annual consumptive use for each 1,000 square feet of lawn and garden irrigated is therefore 0.042 acre feet.

iii. Horses (or equivalent livestock): 0.011 acre feet annually (10 gallons per day) per head with a one hundred percent consumptive use component.

2. Each well will pump a maximum of 0.46 acre feet of water per year per residence for a maximum total of 1.86 acre feet being withdrawn from the Dawson aquifer per year. Such use shall be a combination of household use, irrigation of lawn and garden, and the watering of horses or equivalent livestock. An example breakdown of this combination of use, utilizing the factors described above, is household use of 0.25 acre feet of water per year per residence with the additional 0.21 acre feet per year per residence available for irrigation of lawn and garden and the watering of up to four horses or equivalent livestock on each residential lot.

3. Depletions. Applicant's consultant has determined that maximum stream depletions over the 300 year pumping period for the Dawson aquifer amounts to approximately 36.20% of pumping. Maximum annual depletions for total residential pumping from all wells are therefore 0.67 acre feet in year 300. Should Applicant's pumping be less than the 1.86 total, 0.46 acre feet per lot, per year described herein, resulting depletions and required replacements will be correspondingly reduced.

4. Augmentation of Depletions During Pumping. Pursuant to C.R.S. §37-90-137(9)(c.5), Applicant is required to replace actual stream depletions attributable to pumping of the four residential wells. Applicant's consultant has determined that depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.25 acre feet per residence per year, total of 1.0 acre feet, 0.90 acre feet is replaced to the stream system per year, utilizing non-evaporative septic systems. Thus, during pumping, stream depletions will be more than adequately augmented.

5. Augmentation for Post Pumping Depletions. For the replacement of any injurious post-pumping depletions which may be associated with the use of the Ramses Wells Nos. 1 through 4, Applicant will reserve up to the entirety of the nontributary Laramie Fox Hills aquifer, accounting for actual stream depletions replaced during the plan pumping period, as necessary to replace any injurious post pumping depletions. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Even though this reservation is made, under the Court's retained jurisdiction, Applicant reserves the right in the future to prove that post pumping depletions will be noninjurious. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions. Upon entry of a decree in this case, the Applicant will be entitled to apply for and receive a new well permit for the Ramses Wells Nos. 1 through 4 for the uses in accordance with this Application and otherwise in compliance with C.R.S. §37-90-137.

**V. Remarks.** A. This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the Arkansas River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter with pending Division 2 application in Water Division 2 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the Arkansas

River as set forth herein, and for a finding that those replacements are sufficient. B. Applicant requests a finding that it has complied with C.R.S. §37-90-137(4), and that the ground water requested herein is legally available for withdrawal by the requested non-tributary wells upon the entry of a decree approving an augmentation plan pursuant to C.R.S. §37-90-137(9)(c.5). C. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. D. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. E. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. F. The wells shall be installed and metered as reasonably required by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. G. The Applicant intends to waive the 600 feet well spacing requirement for any wells to be located upon the Applicant's Property. H. Applicant will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 14 days of the filing of this application.

---

**CASE NO. 2020CW3071; GREEN SATIVA, LLC, c/o Babak Behzadzadeh, 2215 Cherry Hills Farm Dr., Englewood, CO 80113** (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Chris D. Cummins, #35154, Emilie B. Polley, #51296, Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Dr., Ste. 250, Colorado Springs, Colorado 80921; (719)471-1212)

Amended Application for Plan for Augmentation

**PUEBLO COUNTY**

**II. Background and Summary of Plan for Augmentation.** Applicant is the lessee of approximately 40 acres and an associated well, from lessor Go Go Real Estate, LLC, such property being located in the SW¼ of Section 24 and the NW¼ of Section 25, all in Township 21 South, Range 61 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado ("Property"). See **Exhibit A** attached to the application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) The Property's address is 63500 East Highway 96, Boone, Colorado 81025. The Applicant intends to utilize the Property for a commercial marijuana grow facility, including irrigation and associated commercial and domestic uses. The Applicant seeks approval of a plan for augmentation for replacement of out-of-priority depletions resulting from the pumping of an existing well located on a parcel adjacent to the Property for the purposes of year-round cultivation and irrigation of a crop including cannabis (hemp and marijuana), and the associated commercial, domestic, drinking and sanitary needs for the grow facility. **III. Application for Approval of Plan for Augmentation.** A. **Structures to be Augmented.** The structure to be augmented consists

of an existing well, known as the "Green Well No. 2", DWR Permit No. 1379-R (WDID 1405070) as decreed in Case No. W-2162, for 1,200 gpm with an annual withdraw limit of 850 acre-feet for irrigation uses, located in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 23, Township 21 South, Range 61 West of the 6<sup>th</sup> P.M., Pueblo, Colorado (UTM 571510 Easting, 4229366 Northing). The Green Well No. 2, originally decreed in Case No. W-2162, was drilled to the Arkansas River Alluvium on December 31, 1933. There is also domestic well with Permit No. 142742 located on the Property serving a duplex, which is separate from the grow operations and is not a part of this Application for Augmentation Plan. B. Water Rights to be Used for Augmentation. Water rights to be used for augmentation consists of fully consumable water leased from the Arkansas Groundwater Users' Association ("AGUA"). Applicant reserves the right to transfer its rights and entitlements under this plan for augmentation, when approved, to a well users association or other augmenting entity in the future. Applicant also reserves the right to seek a term and condition in any final decree requesting the Water Court to retain perpetual jurisdiction over the plan for augmentation for the sole purpose to add new or additional sources of augmentation water pursuant to Section C.R.S. §37-92-305(8). 1. Lease with the Arkansas Groundwater Users' Association. Applicant has entered into a lease for 17 acre-feet of fully consumable water with AGUA. The water rights or sources of water that may be used for augmentation in this augmentation plan include the following: Fully consumable water owned or controlled by AGUA. All water to be used in this augmentation plan provided by AGUA must be decreed or otherwise legally available for augmentation purposes. The source of such water may include AGUA's reusable Excelsior Ditch historical consumptive use credits, as decreed in Case No. 04CW062, along with other fully consumable supplies such as excess Triview Metropolitan District, Donala Water and Sanitation District, and/or Colorado Springs Utilities reusable municipal return flows accruing to the Arkansas River at Fountain Creek. The Excelsior Ditch historical consumptive use credits accrue to the Arkansas River near it confluence with Chico Creek through recharge pits decreed in Case No. 04CW62, but also may be contributed to the Arkansas River from releases from the Stonewall Springs Reservoir Complex, as decreed in Case No. 16CW3093, at a point upstream of the Chico Creek confluence. C. Statement of Plan for Augmentation. 1. Diversions and Depletions. a. Uses. Indoor and outdoor cultivation and irrigation of a crop, including cannabis (hemp and marijuana), and the associated commercial, processing, industrial, domestic (including landscape irrigation and stock watering), drinking and sanitary needs for a grow facility. b. Diversions. Diversions will occur year-round, with all uses generally increasing during the summer months. The anticipated maximum well diversions under this plan is up to 15.0 annual acre feet. c. Depletions. Water diverted for all uses will be considered to be one-hundred percent consumptive. d. Return Flows. As all uses are being considered one hundred percent consumptive Applicant is not claiming any return flows from diversions from the well, including septic and irrigation return flows. However, Applicant reserves the right to claim such return flows in the future. 2. Location and Timing of Depletions. Pumping of the Green Well No. 2 will be entitled to occur on a year-round basis, resulting in year-round lagged depletions to the Arkansas River. Depletions from Green Well No. 2 occur to the Arkansas River in the SE $\frac{1}{4}$  of Section 23, Township 21 South, Range 62 West of the 6<sup>th</sup> P.M., approximately 12 miles downstream from AGUA's Excelsior Ditch Recharge Ponds point of accretion. Applicant's water resource engineer has generated a Unit



Response Function (URF) for the wells using the Glover Method (Glover, 1954). The lagging analysis shows that over 95 percent of the depletions are expected to occur within 24 months of pumping. 3. Replacement Water. Replacement water available from Applicant's lease with AGUA to augment the Applicant's well depletions are at least 15.5 acre-feet, accounting for transit losses, and any such additional augmentation water applicant may acquire in the future. Current replacement water provided by AGUA is fully consumable and is available to the Applicant at the point of depletion on the Arkansas River caused by the pumping of any well under this plan. D. Name and Address of Owners of Land Upon Which Structures are Located. The well to be augmented under this plan is located on land owned by Go Go Real Estate, LLC whose address is 2215 Cherry Hills Farm Dr., Englewood, CO 80113. V. Remarks. A. Upon entry of a decree in this case, the Applicant shall be entitled to apply for and receive well permit(s) and all subsequent replacement or additional wells for use in accordance with any decree entered in this case. B. The Applicant requests a finding that vested water rights of others will not be materially injured by the withdrawals of groundwater and replacement of lagged depletions under the proposed augmentation plan. C. The Green Well No. 2 will be re-permitted under the terms and conditions of the augmentation plan requested herein, upon decree. The Green Well No. 2 will be equipped with a totalizing flow meter and Applicant will submit diversion records to the Division Engineer on a monthly basis or as otherwise requested by the Division Engineer. The Applicant will also provide Accountings to the Division Engineer and Water Commissioner to demonstrate compliance under this plan of augmentation.

-----  
THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of January 2020, (forms available at Clerk's office or at [www.courts.state.co.us](http://www.courts.state.co.us), after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

-----  
Witness my hand and the seal of this Court this 15<sup>th</sup> day of December 2020.

*Michele Santistevan*

Michele M. Santistevan, Clerk  
District Court, Water Div. 2



Pueblo Judicial Building  
501 N. Elizabeth Street, Suite 116  
Pueblo, CO 81003; (719) 404-8749

(Court seal)  
Published: